



THE ATTORNEY GENERAL  
OF TEXAS

JIM MATTOX  
ATTORNEY GENERAL

July 27, 1990

Mr. A.W. Pogue  
Commissioner  
State Board of Insurance  
1110 San Jacinto  
Austin, Texas 78701-1998

OR90-328

Dear Mr. Pogue:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 9626.

By letter of May 14, you referred to us a request by an individual through her lawyer for copies of complaints or reports related to the board's investigation of agent Charles Ray Levingston. You claim that all the requested documents are exempt from disclosure by section 3(a)(3) of the Open Records Act. You also claim that sections 3(a)(1) and 3(a)(11) apply to other portions of the file.

We have examined the records, and have determined that litigation in an administrative forum is reasonably anticipated within the terms of section 3(a)(3) of the Open Records Act, and that most of the information is reasonably related to the anticipated litigation. See Open Records Decision Nos. 551 (1990); 368 (1983). However, the file contains correspondence sent to Mr. Levingston and correspondence received from him. When the opposing party has seen or had access to information, no section 3(a)(3) interest exists in it. Open Records Decision Nos. 349, 320 (1982). Accordingly, aside from the correspondence between the board and Mr. Levingston and any attachments to it, the requested records are excepted by section 3(a)(3).

The correspondence between the agency and Mr. Levingston are not communications between agency personnel or between the agency and a consultant. Thus, section 3(a)(11) does not apply to them. See Attorney General Opinion H-436 (1974).


You claim that the requestor's right of privacy is implicated in information in this file. If the

correspondence between Mr. Levingston and the agency personnel contains the private information you allude to, it may not be withheld from the requestor or her attorney. Under section 3B of the Open Records Act a "person or the authorized representative of a person" has a special right of access to records protected from public disclosure by laws intended to protect that person's privacy interests. The requestor has provided a written authorization for you to furnish her attorney records relating to herself as complainant; thus, he is her "authorized representative" within section 3B of the Open Records Act.

Aside from the correspondence between Levingston and the agency, you may withhold the requested information under section 3(a)(3), notwithstanding the fact that the requestor herself supplied much of this information to your agency. The Texas Open Records Act makes information "available to the public." V.T.C.S. art. 6252-17a, § 3(a). The individual who supplied these records has no greater right than any member of the public to them. See Open Records Decision No. 288 (1981). If your agency voluntarily made these records available to the requestor, they would "then be available to any person," including the insurance agent who is subject to the administrative litigation in this case. When these records have been made available to the insurance agent, through administrative discovery or otherwise, section 3(a)(3) will no longer apply to them. See Open Records Decision No. 349 (1982).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR90-328.

Yours very truly,



Susan Garrison  
Assistant Attorney General  
Opinion Committee

SG/le

Ref.: ID# 9626

Enclosure: Open Records Decision Nos. 551, 368

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